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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/767,798

01/29/2004

Neil G. Murray JR.

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EXAMINER

VERBITSKY, GAIL KAPLAN

ART UNIT

PAPER NUMBER

2855

MAIL DATE

DELIVERY MODE

07/29/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/767,798	Applicant(s) MURRAY ET AL.	
	Examiner Gail Verbitsky	Art Unit 2855	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 July 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-8, 12-21 and 24-36.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
 13. ☐ Other: _____.

/Gail Verbitsky/
 Primary Examiner, Art Unit 2855

Applicant states that Messler does not teach to perform the thermal analysis simultaneously with heating, that the "thermal thermal image only obtained as a weld formed and not formed as a finished seam", and that inspection radiation 30 is completely independent of the thermal radiation emanating from the weld. These arguments are not persuasive because the fact that they are completely independent does not necessarily mean that they cannot be done simultaneously.

In addition, in col. 2, lines 65-67 and col. 3, lines 1-3, Messler teaches that the inspection radiation and laser radiation can be used during the welding/ operation (making the seam) as well as on the finished product. Messler also states that the inspection radiation is completely independent and can be used any time (col. 5, line 38). This would imply that the inspection radiation 31-33 can be used simultaneously with the detection device (CCD and pyrometer) which detects the radiation emanating from the weld (Fig. 2). Also, Messler states that it is possible to use the inspection radiation 30 as an offset in time, after the welding is completed and collect the radiation 33 from the seam. This measure appears to be an additional choice and only confirm but does not exclude the step of performing the inspection during forming of the weld seam.

Applicant states that Messler does not teach to heat the abutment multiple times as required by claim 13. This argument is not persuasive because, Messler teaches to direct a laser beam on the seam in a continuous mode, which mode, in the broadest reasonable interpretation, is considered to comprise a plurality of short applications of the laser beam. Please note, that the applicant does not claim intermittent or pulsed applications of the laser beam, and that any continuous beam could be considered as a plurality of (point) applications of energy/ heat.

With respect to Juret: Juret is only being used as a secondary reference for its teaching that the THERMAL image of the weld could be obtained. Applicant states that Messler in combination with Juret do not teach obtaining a thermal image of the pool in its entirety. This argument is not persuasive because: Applicant has never claimed that the camera has any particular means to perform this limitation, therefore, it is concluded that the camera of Messler and Juret, as well as another thermal camera, would be capable of being set up (adjust the FOV) such that to obtain the thermal image of a desired length of a surface of interest and such of the entire weld.